

**ASSEMBLY BILL**

**No. 1161**

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**Introduced by Assembly Member Niello**

February 22, 2005

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An act to amend Section 10233 of, and to add Sections 10131.02 and 10233.01 to, the Business and Professions Code, and to amend Section 1916.1 of the Civil Code, relating to real estate brokers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1161, as introduced, Niello. Real estate brokers.

Under existing law, the Real Estate Law, the Department of Real Estate licenses and regulates persons engaged in the business of a real estate broker. Existing law defines a real estate broker as a person who performs specified acts for another relating to, among other things, loans secured by real property.

This bill would authorize a loan made, arranged, or transferred by or through a real estate broker to be secured by certain types of personal property incidental to the real property security.

Existing law requires a real estate broker to comply with specified requirements when servicing a promissory note secured directly or collaterally by a lien on real property or a real property sales contract.

This bill would exempt from these requirements a real estate broker who is an issuer of securities qualified and registered with the Department of Corporations when servicing a loan that meets specified requirements. The bill would make related changes.

Existing law exempts from specified interest rate restrictions any loan made or arranged by a licensed real estate broker. Existing law provides that the exemption applies whether or not the broker was acting within the scope of his or her license.

This bill would delete that provision and declare the Legislature's intent that the interest rate exemption shall only apply when the real estate broker is acting within the scope of his or her license.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 10131.02 is added to the Business and  
2 Professions Code, to read:

3 10131.02. A loan made, arranged, or transferred by or through  
4 a real estate broker under subdivision (d) or (e) of Section 10131  
5 may be additionally secured by personal property incidental to  
6 the real property security, provided the personal property security  
7 consists of one or more of the following:

8 (a) Assignments of rents and profits.

9 (b) Cash collateral to be disbursed through construction loan  
10 agreements executed by the borrower and the lender.

11 (c) Building and site plans and specifications, including  
12 contracts with design professionals.

13 (d) Construction contracts with a builder who is a licensed  
14 general contractor.

15 (e) Building permits issued by the political subdivision having  
16 jurisdiction over the matter.

17 (f) Any other personal property specifically related to the  
18 construction of building and site improvements or to the  
19 ownership and operation of the real property security that  
20 constitutes collateral security incidental to the real property  
21 security.

22 SEC. 2. Section 10233 of the Business and Professions Code  
23 is amended to read:

24 10233. ~~A—~~ *Unless the licensee meets the requirements of*  
25 *Section 10233.01, a* real estate licensee who undertakes to  
26 service a promissory note secured directly or collaterally by a  
27 lien on real property or a real property sales contract shall  
28 comply with each of the following requirements:

29 (a) The licensee shall have a written authorization from the  
30 borrower, the lender, or the owner of the note or contract, that is  
31 included within the terms of a written servicing agreement that  
32 satisfies the requirements of subdivision (k) of Section 10238.

1 (b) The licensee shall provide the lender or the owner of the  
2 note or contract with at least the following accountings:

3 (1) An accounting of the unpaid principal balance at the end of  
4 each year.

5 (2) An accounting of collections and disbursements received  
6 and made during each year.

7 (3) Each accounting required under this subdivision shall  
8 identify the person who holds the original note or contract and  
9 the deed of trust evidencing and securing the debt or obligation  
10 for which the accounting has been provided.

11 (c) The licensee shall provide to the lender or the owner of the  
12 note or contract written notification within 15 days of the  
13 occurrence of any of the following events:

14 (1) The recording of a notice of default.

15 (2) The recording of a notice of trustee's sale.

16 (3) The receipt of any payment constituting an amount greater  
17 than or equal to five monthly payments, together with a request  
18 for partial or total reconveyance of the real property, in which  
19 case the notice shall also indicate any further transfer or delivery  
20 instructions.

21 (4) The delinquency of any installment or other obligation  
22 under the note or contract for over 30 days.

23 SEC. 3. Section 10233.01 is added to the Business and  
24 Professions Code, to read:

25 10233.01. Section 10233 does not apply to a real estate broker  
26 who is an issuer of securities qualified and registered either  
27 exclusively by or in coordination with the Department of  
28 Corporations pursuant to Section 25110, 25113, 25120, or 25130  
29 of the Corporations Code, provided that all of the following  
30 apply:

31 (a) The security being offered is in the form of an entity or  
32 mortgage pool in which the investor holds an interest, share, or  
33 certificate, and the investor is not the lender or note holder.

34 (b) The application for and the offering circular or prospectus  
35 permitted for the issuance of the security includes the  
36 requirements to be imposed upon the real estate broker for loan  
37 servicing.

38 (c) The representations in the servicing agreement are in  
39 compliance with this chapter.

1 (d) A copy of the intended loan servicing agreement or a  
2 description of the material terms of the loan servicing agreement  
3 is included in the offering circular or prospectus.

4 SEC. 4. Section 1916.1 of the Civil Code is amended to read:

5 1916.1. The restrictions upon rates of interest contained in  
6 Section 1 of Article XV of the California Constitution shall not  
7 apply to any loan or forbearance made or arranged by any person  
8 licensed as a real estate broker by the State of California, and  
9 secured, directly or collaterally, in whole or in part by liens on  
10 real property. For purposes of this section, a loan or forbearance  
11 is arranged by a person licensed as a real estate broker when the  
12 broker (1) acts for compensation or in expectation of  
13 compensation for soliciting, negotiating, or arranging the loan for  
14 another, (2) acts for compensation or in expectation of  
15 compensation for selling, buying, leasing, exchanging, or  
16 negotiating the sale, purchase, lease, or exchange of real property  
17 or a business for another and (A) arranges a loan to pay all or any  
18 portion of the purchase price of, or of an improvement to, that  
19 property or business or (B) arranges a forbearance, extension, or  
20 refinancing of any loan in connection with that sale, purchase,  
21 lease, exchange of, or an improvement to, real property or a  
22 business, or (3) arranges or negotiates for another a forbearance,  
23 extension, or refinancing of any loan secured by real property in  
24 connection with a past transaction in which the broker had acted  
25 for compensation or in expectation of compensation for selling,  
26 buying, leasing, exchanging, or negotiating the sale, purchase,  
27 lease, or exchange of real property or a business. The term “made  
28 or arranged” includes any loan made by a person licensed as a  
29 real estate broker as a principal or as an agent for others, ~~and~~  
30 ~~whether or not the person is acting within the course and scope of~~  
31 ~~such license.~~

32 SEC. 5. It is the intent of the Legislature that the holding in  
33 *Gibbo v. Berger*, 123 Cal.App.4th 396 (2004), be codified, so  
34 that for the usury exemption to apply, the loan is to be made or  
35 arranged within the course and scope of the real estate broker’s  
36 license.